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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED
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JOHN G. POWERS, and EMMA
STILLMAN,

Plaintiffs and Respondents,

vs.

MARVIN S. TAYLOR,

Defendant and Appellant.

Supreme Court, Utah

Case No.
9732

APPELLANT'S BRIEF

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IN THE SUPREME COURT of the STATE OF UTAH

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9732

APPELLANT'S BRIEF

STATEMENT OF FACTS

Defendant and Appellant herein had heretofore appealed from a judgment of the Third Judicial District Court to the Supreme Court of the State of Utah, being Case Number 9694. Notice of appeal had been duly and properly filed and a Supersedeas Bond had been posted in this matter, which had been approved by the Court.

The Defendant and Appellant retained a number of ponies or horses on his property and on one occasion

one of the horses broke away from the confines of his property and trespassed upon the property of Plaintiff and Respondent, John G. Powers.

The Plaintiff and Respondent, John G. Powers, thereupon caused to issue an Order to Show Cause why the Defendant and Appellant, Marvin S. Taylor, should not be punished for contempt of Court in that he had continued to keep horses on his premises after the Third Judicial District Court had enjoined this practice. The Third Judicial District Court found Marvin S. Taylor guilty of contempt and imposed a fine of \$100.00 and ten days in the County Jail. It is from this finding and judgment that Defendant and Appellant tMarvin S. Taylor now appeals.

STATEMENT OF POINTS RELIED UPON

1. The Court erred in finding the Defendant and Appellant, Marvin S. Taylor, guilty of contempt of Court and erred in imposing a sentence upon the Defendant and Appellant, Marvin S. Taylor.

ARGUMENT

The Court erred in finding the Defendant and Appellant guilty of contempt of Court for the reason that the Defendant and Appellant had posted a Superseedeas Bond which divested the Court of any further jurisdiction in the matter. A stay of proceedings is

effective by the posting of a Supersedeas Bond, unless otherwise prohibited by law or by Rules of Civil Procedure. These rules (62 D) do not prohibit such stay nor do the laws of the State nor do the decisions in former cases prohibit a stay.

The general rule as quoted in American Jurisprudence Volume 3, Sec. 543, is that the Supersedeas Bond prevents all further proceedings in the subordinate Court in the suit in which the judgment, order or decree is rendered or made, except such as are necessary to preserve the rights of the parties. (Smith vs. Kimball, Supreme Court of Utah, 289 Pacific 588, and Grand Central Mining Company vs. Mammoth Mining Company, Supreme Court of Utah, 104 Pacific 573). The sole purpose of a Supersedeas Bond is to stay the enforcement of the judgment or decree pending the appeal. Skeen vs. Pratt, Supreme Court of Utah, 48 Pacific 2nd 457. Rule (62 C) reads as follows:

Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving or denying an injunction, the Court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal from such conditions if it considers proper for the security of the rights of the adverse party.

The Court did not suspend, modify, restore or grant an injunction pending this appeal and unless and until it had acted pursuant to Rule (62 C), it was powerless to punish or find the Defendant and Appel-

lant in contempt of Court. Certainly without any action on the Court's part and inasmuch as Defendant and Appellant had placed a Supersedeas Bond, he could rely upon the fact that all proceedings were stayed pending this appeal. The utmost that the Court might do in this hearing on the Order to Show Cause would be to suspend, modify, restore or grant an injunction pending this appeal.

The Court further erred in finding the Defendant and Appellant guilty of contempt for the violation of the injunction imposed upon him because the injunction was a mandatory one, that is one which:

1. Commands the Defendant to do some positive act or particular thing.

2. Prohibits him from refusing (or persisting and refusal) to do or permit some act to which the Plaintiff has a legal right; or

3. Restrains the Defendant from permitting previous wrongful act to continue operative, thus virtually compelling him to undo it, as by removing obstructions or erections, or in this case by removing his horses, and restoring the Plaintiff or the place or the subject matter to the former condition. (Black's Law Dictionary).

The general rule is that an appeal from all proceedings on a mandatory injunction are stayed by an appeal from the order granting the injunction. It is well settled that all proceedings on a mandatory injunction are stayed by an appeal from the order grant-

ing the injunction. (Bullion B and C Mining Company vs. Eureka Hill Mining Company, Supreme Court of Utah, 13 Pacific 174; Elliot vs. Whitmore, Supreme Court of Utah, 37 Pacific 459, generalized in 93 ALR, page 709 and particularly on page 715.

CONCLUSION

The Defendant and Appellant therefore submits that the lower Court erred in finding him guilty of contempt, because:

1. The injunctoin was a mandatory one which was stayed upon appeal and
2. The Defendant and Appellant, by posting a Supersedeas Bond protected the rights of the parties.

Respectfully submitted,

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